IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

CRL.A.No. 601 of 2001()

CC.525/1997 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA

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APPELLANT:

MUHAMMED, S/O.KONTHALAM,
KUZHIMANDAPATHIL VEEDU,
NELLIKUZHY KARA,
ERAMALLOOR VILLAGE, KOTHAMANGALAM.

BY ADV. SRI.K.J.JOSEMON
SRI MATHEW SCARIA

RESPONDENTS:

1. K.C.KURIAN,
KODUMKULATH VEEDU, THALAPILLY,
KUMARANALLOOR P.O.,
VADAKKANCHERRY,
THRISSUR.

2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.VIJAYA BHANU
SRI.TONY MATHEW
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.R.UDAYABHANU, J.**

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Crl.A.No.601/2001-B

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Dated this the 19th day of September, 2007

**J U D G M E N T**

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act in which the accused was acquitted.

2. The prosecution case is that towards discharge of a debt of Rs.60,000/-, the accused issued the impugned cheque dated 03/02/1997 and that when presented the same got dishonoured for want of funds in the account of the accused. The lawyer notice sent was replied to raising false averments.

3. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P7. Defence examined DW.1 and marked Exts.D1 and D1(a).

4. The trial court found that the evidence of DW.1, the accused appeared to be true and his case more probable.

5. PW.1, the complainant has testified that he had prior transactions also with the accused and that he provided loan to the accused. In the cross-examination it was brought out that he is a retired policeman from the police department and that he was also running a business. The accused had repaid the amounts borrowed earlier. At the time of lending the amount one K.P.Elias was also along with him. It was also brought out that he had lent the money without obtaining any other documents. It was also stated that he was not aware of the business concern by name Premier Coffee Marketing Company.

6. The version of DW.1, the accused is that the complainant was a person employed in Premier Coffee Marketing Company. The accused had business transactions with the Premier Coffee Marketing Company. His brother Rajan also had transactions with the above company and towards the security himself and his brother had entrusted cheques. According to him, he had issued the impugned cheque as blank to Jibi and Elias who owned the Premier Coffee Marketing Company. Jibi has filed a complaint against his brother Rajan vide C.C.No.612/1994 with respect to the offence under Section 138 N.I.Act and the same was withdrawn and the civil case as

O.S.No.28/1999 is pending against Rajan. According to him Jibi got the present complaint filed through the complainant. Ext.P5 is the reply notice sent by him. He has also produced Ext.D1 bill and Ext.D1 (a) postal cover addressed to the accused in the name of Premier Coffee Works, Ottupara, Wadakkanchery. The bill is for a sum of Rs.1,620/-. He has stated in the cross-examination that Elias had told him that the cheque issued as security was lost. It was in the above circumstances, that he did not intimate the bank or complain before the police. I find that in the reply notice, the case set up is that he had business transactions with the Premier Coffee Marketing Company owned by Elias and that the impugned cheque was issued to Elias as security and that he has no affairs with the complainant and that he does not even know him. I find that PW.1 has admitted the presence of Elias at the time of issuance of cheque. It has also come out in evidence that Elias is no more. The stand of PW.1 is that he is not aware of the existence of the business concern by name Premier Coffee Marketing Company. He has not specifically mentioned as to whether the above business is owned by Elias also. He has stated that Elias was a person conducting all types of businesses. It was in the above circumstances that the court found that the version of the accused DW.1 appeared more probable. Further, in the present case

I find that the accused is a person belonging to Kumaranellur in Thrissur District. PW.1 belongs to Kothamangalam and according to him he had transactions with DW.1 at Kothamangalam. It is in the above circumstances that the lending of such a huge amount without any documentation is suspicious. In the circumstances, I find that no interference is called for in the order of the court below. The appeal is dismissed.

**K.R.UDAYABHANU,**
**Judge**

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**K.R.UDAYABHANU, J.**

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Crl.A.No.601/2001-B

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**J U D G M E N T**

19th September, 2007